NO. 97-2005

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

KAY HOVERMAN,

PETITIONER-RESPONDENT,

v.

CHUCK FRAUTSCHI, A/K/A CHARLES E. FRAUTSCHI,

RESPONDENT-APPELLANT.

ERRATA SHEET

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PLEASE TAKE NOTICE that the attached opinion is to be substituted for the above-captioned opinion which was released on February 24, 1998.

Dated this 11th day of March, 1998.

COURT OF APPEALS
DECISION
DATED AND FILED

February 24, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2005

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RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Polk County: ROBERT H. RASMUSSEN, Judge. *Modified and, as modified, affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

MYSE, J. Charles Frautschi appeals an injunction order. Frautschi contends that there was insufficient evidence to support the finding of harassment under §§ 813.125 and 947.013, STATS., that the injunction violates his constitutional rights to free speech and to bear arms, and that the injunction is overly broad. This court concludes that the finding of harassment is supported by

sufficient evidence and that Frautschi has failed to support his constitutional claim of the right to bear arms. This court also concludes that although one provision of the injunction is impermissibly overbroad, remand is unnecessary because the provision can be saved through a narrowing interpretation. The order of injunction, as modified by this opinion, is affirmed.

Charles Frautschi and Kay Hoverman are neighbors. Over the course of two and a half years Frautschi has kept Hoverman under almost constant surveillance, and recorded his observations in a journal.[1] Frautschi let others know about the existence of the journal, but claims he showed its contents only to his wife. In addition to dutifully keeping the journal, Frautschi has further delved into Hoverman's private affairs. For example, during a police investigation into the death of Hoverman's son, Frautschi conducted his own investigation, going so far as to telephone the nurses who were first on the scene and who performed CPR on the child. Frautschi also attempted to speak with Hoverman's employer concerning private issues of no concern to him, and "repeatedly" discussed Hoverman with other neighbors. Further, although Frautschi did not threaten Hoverman, he has made remarks to others about the need to keep a loaded firearm on his premises in order to insure his safety from her and her boyfriend.

Hoverman sought an injunction to prevent Frautschi from continuing to engage in this intrusive behavior, and after a thorough two-and-a-half-hour hearing, the trial court issued an injunction. The trial court concluded that Frautschi harassed and intimidated Hoverman by keeping a journal and telling others about it, and that Frautschi should reasonably have known his actions

[1] Among other things, the journal is reported to record such minor details as the times Hoverman and her boyfriend arrive at and leave the property.

would have such a result. The trial court further concluded that Frautschi's veiled comments about the need to keep a loaded gun around caused it "sufficient concern" to support a restriction on Frautschi's use of firearms. The court then ordered the following injunction:

> [Frautschi shall be enjoined from] having any contact with the petitioner of any type or nature whatsoever, direct or indirect, by any means. Further, respondent shall not discuss the petitioner, her daughter and/or her son's death with anyone except law enforcement personnel and/or personnel of the PCDSS who are involved in the investigation of the death of the petitioner's son and/or the pending case with regard to the petitioner's daughter (EMJ - dob 8/8/96). Respondent is allowed to contact public regulatory agencies (e.g. Zoning Administrator's Office) to request information and make valid reports and/or complaints. Respondent is allowed to make appropriate contacts with officials of the Town of Osceola. Respondent shall not make any comments to anyone regarding the character of the petitioner. Respondent shall not make any notes or written memoranda regarding the petitioner's conduct unless such conduct is patently criminal or in violation of zoning or other regulatory provisions. Respondent shall not engage in surveillance of petitioner or her activities. Respondent shall not take or allow his firearms to be taken outside his home for any purpose other than legitimate hunting purposes during the hunting season.

"Harassment" is defined under § 813.125(1)(b), STATS., as "Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose." Under § 813.125(4)(b), STATS., a court may grant an injunction ordering the respondent to cease or avoid the harassment of another person if it finds "reasonable grounds to believe" that the respondent violated § 947.013, STATS. Section 947.013, in turn, requires that the harassment be intentional and constitute a "pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose."

Frautschi raises three arguments on appeal. First, he argues that there is insufficient evidence to support the trial court's findings that he both harassed Hoverman and that he intended to harass her. The standard of review in such cases is dictated by § 805.17(2), STATS: The trial court's findings will not be set aside unless clearly erroneous. This court will search the record for evidence to support the trial court's findings of fact. ***In re Estate of Becker***, 76 Wis.2d 336, 347, 251 N.W.2d 431, 435 (1977).

This court concludes that there is sufficient evidence to support both the findings of harassment and the intent to harass. Frautschi's own statements at the injunction hearing provide sufficient support for the finding of harassment. He admitted to keeping and telling others about his journal, to discussing Hoverman "repeatedly" with at least two other neighbors, to calling Hoverman's boss, and to calling the nurses who performed CPR on Hoverman's deceased son. This all shows a pattern of conduct evidencing a continuity of purpose. Further, it is sufficient to show harassment. In ***Bachowski v. Salamone***, 139 Wis.2d 397, 409, 407 N.W.2d 533, 538 (1987), our supreme court stated that the purpose behind §§ 813.125 and 947.013, STATS., was to "prevent repeated assaults on the privacy interests of individuals …." The behavior recited above can properly be construed as a repeated assault on Hoverman's privacy interests. Further, Frautschi's blatant disregard for Hoverman's rights can properly support an inference that he intended to harass her. This court refuses to overturn any of these factual findings.

Frautschi next argues that his constitutional right to bear arms is infringed by the injunction. In sole support of this argument, Frautschi refers us to the Second Amendment to the United States Constitution, which reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Frautschi provides no

argument as to why this Amendment offers him protection. This court is unaware of any case, and Frautschi does not provide us with one, establishing that the Second Amendment offers protection against the actions of state governments acting to insure the safety of its citizens. Further, Frautschi does not argue that the Second Amendment applies to the states through the due process clause of the Fourteenth Amendment. Arguments raised but inadequately briefed will not be considered. ***State v. Pettit***, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992).

Frautschi's final argument is that the injunction is written too broadly and is therefore invalid. Our review of the scope of an injunction is limited, for this is a matter within the "sound discretion of the trial court." ***In re Paternity of C.A.S.***, 185 Wis.2d 468, 495, 518 N.W.2d 285, 294 (Ct. App. 1994). This court "may not overturn a discretionary determination that is demonstrably made and based upon the facts of record and the appropriate and applicable law." ***Id***.

Frautschi first attacks the provision enjoining any contact with Hoverman on the grounds that he has had virtually no contact with Hoverman over the last twenty months, and hopes to have none in the future. The trial court is given discretion to enjoin harassing and intimidating conduct proven at trial and substantially similar conduct. ***Bachowski***, 139 Wis.2d at 414, 407 N.W.2d at 540. As already noted, the trial court could properly find that Frautschi has had harassing contact with Hoverman. Further, the fact that Frautschi intends on having no contact with Hoverman in the future, while prudent under the circumstances, is insufficient to overturn the injunction.

Frautschi next attacks that provision preventing him from discussing Hoverman, her daughter, or her deceased son with anyone except law enforcement personnel or those involved in the daughter's CHIPS case. Frautschi apparently argues that this provision is invalid because the CHIPS case has been resolved. This argument has no merit. The trial court sought to enjoin Frautschi from involving himself in the Hoverman affairs, while recognizing a legitimate purpose might exist with respect to the CHIPS case. The fact that that case is over does not supply grounds to overturn the injunction.

Frautschi also attacks that portion of the injunction preventing him from keeping a journal "unless such conduct is patently criminal." Frautschi claims, first, that he "is not knowledgeable in legal interpretation and may not know what is, or is not, patently criminal." This court is unwilling to overturn this provision based on Frautschi's claims of ignorance. If Frautschi is unclear as to whether Hoverman's actions are criminal, he should refrain from conducting surveillance because such intimidating behavior will have no legitimate purpose. Frautschi also claims that this provision is unsupported by the record, based on a comment by the trial court that his note taking actions were not considered harassment. This argument, however, ignores comments made at the end of the proceedings where the trial court specifically addressed the harassing and intimidating nature of this behavior. This court therefore believes that the journal writing provision is supported by appropriate findings.

Frautschi's final attack on the injunction concerns the provision enjoining him from "having any contact with the petitioner of any type or nature whatsoever, direct or indirect, by any means." Frautschi claims this is overbroad because it reaches conduct that is either constitutionally protected or that does not constitute harassment under the statute. In ***Bachowski***, the supreme court

concluded that an injunction likewise prohibiting the respondent from having "any contact" with the petitioner was impermissibly overbroad and invalid. This was because the injunction might wrongly "proscribe conduct which is constitutionally protected, e.g., distributing campaign literature, or which simply would not constitute harassment under the statute, e.g., saying good morning …." ***Id***. at 414, 407 N.W.2d at 540.

Although this court agrees that this part of the injunction is impermissibly overbroad, it sees no need to remand the matter to the trial court. Instead, this court will provide a constitutionally permissible interpretation of the provision enjoining "all contact:" Frautschi is enjoined from all harassing or intimidating contact with Hoverman, direct or indirect, that is not constitutionally protected.

The request for frivolous sanctions on appeal is denied.

By the Court.—Order modified and, as modified, affirmed.

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